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act," after the property is acquired, the possession is given to the creditor. *Newton v. Withey,* 5 Vt. 97; *Brown v. Neilson,* 61 Neb. 765.

MASTER AND SERVANT—INJURIES TO SERVANT—WARNING—DELEGATION OF DUTY.—HENDRICKSON V. UNITED STATES GYPSUM CO., 110 N. W. 322 (IA.).—*Held,* that the duty of a master operating a mine to warn employees of an expected explosion in blasting was one which could not be delegated to a fellow servant of the person injured. Bishop, J., *dissenting.*

A master in delegating one servant to warn a fellow-servant of a special danger, does so at his peril, *Wheeler v. Wason M'f'g Co.,* 135 Mass. 294; and so where the employer places his employees where there is unusual danger, even though a foreman directs the work, *Thompson v. Chicago M. & St. P. Ry. Co.,* (*C. C.*), 14 Fed. 564; also where an apprentice was killed while working under the direction of his tradesman, *Missouri Pac. Ry. Co. v. Peregoy,* 36 Kan. 424. But where a servant was injured through negligence of one whose duty it was to give signal when a bale was about to be lowered into a ship, it was held that the master was not liable, *Cheeney v. Ocean S. S. Co.,* 86 Ga. 278; and where a section hand was killed while working on the railroad under the direction of a foreman, no money could be had against the railroad company, *Shea v. Pa. R. Co.,* 13 Atl. 193. However, the tendency of the courts is to lay down the rule that a master cannot by delegating his authority to another, avoid liability and the presumption as to the point in question is in favor of the plaintiff. *F. T. Smith Oil Co. v. Slover,* 58 Ark. 168; *Carlson v. Northwestern Tel. Exch. Co.,* 63 Minn. 428.

MASTER AND SERVANT—INJURIES TO THIRD PERSONS—SCOPE OF EMPLOYMENT.—ST. LOUIS SOUTHWESTERN RY. CO. V. BRYANT, 99 S. W. 693 (ARK.)—*Held,* that where the foreman of a bridge gang employed by a railroad threw from a moving train a water cooler belonging to him, whereby plaintiff was injured, and there was no evidence tending to show that it was in the line of his duty to provide appointments for the cars, his act was not one for which the railroad company could be held liable as within the scope of his employment.

In determining the question of authority the object, purpose, and end of the employment are to be regarded; and in every instance it becomes a mixed question of law and fact, to be settled by the peculiar facts and circumstances, *Cooley on Torts,* (3d Ed.) 1035, which have not always been consistently interpreted. Thus where a section foreman used a hand car in his own business and negligently injured one at a crossing, the company was held not liable. *Branch v. International, etc., Ry. Co.,* 92 Tex. 288; *contra, Salisbury v. Erie R. R. Co.,* 66 N. J. L. 233. And compare *Ritchie v. Waller,* 63 Conn. 155 with *McCarthy v. Timins,* 178 Mass. 378. But where a brakeman threw a stone at a boy who had been trespassing, and the stone struck another person, the act was declared not done in behalf of the railroad company which was accordingly not liable. *Georgia R. and Banking Co. v. Wood,* 94 Ga. 124. And where the defendant's driver injured a boy, the defendant's liability was said to be contingent upon whether the act was to gratify personal malice or to remove the boy from the wagon. *Brennan v. Merchant,* 205 Pa. 258. In harmony with the present case is *Walton v. New York Cent. Sleeping Car Co.,* 139 Mass. 556, where a sleeping car porter threw from the car a package to his washerwoman, thus injuring the plaintiff. The act was declared outside of the scope of his employment.